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*(subject to editorial corrections)**

2003 No. 3796

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

GEORGE SIMON BARR

PLAINTIFF;

-and-

HER MAJESTY'S COMMISSIONERS OF CUSTOMS AND EXCISE

DEFENDANT.

McCLOSKEY J

I INTRODUCTION

[1] This is a somewhat unusual claim for redress by George Simon Barr, the Plaintiff, who sues Her Majesty's Commissioners of Customs and Excise ("*HMCE*") in the circumstances outlined below.

[2] The two forms of relief sought by the Plaintiff are damages and/or a declaration. The Plaintiff's claim is brought under the Human Rights Act 1998 ("*HRA 1998*"). He claims that two of the protected Convention rights enjoyed by him have been violated by the conduct of the Defendant's servants and agents. Initially, he also sought a declaration of incompatibility, under Section 4 of HRA 1998, in respect of certain statutory provisions. However, upon the hearing of this action (on 6th October 2008), it was confirmed that the Plaintiff no longer pursues this particular form of relief.

[3] The thrust of the Plaintiff's case is conveniently encapsulated in the following extract from the Writ of Summons

> "*The Respondent* [sic] *detained, seized and destroyed property belonging to the Plaintiff thus denying him peaceful enjoyment of it. Further, by failing to issue condemnation proceedings required by law within a reasonable time, the Respondent deprived the Plaintiff of a fair hearing within a reasonable time by an independent and impartial tribunal established by law.*"

As practitioners familiar with the machinery of HRA 1998 will quickly appreciate, the two Convention rights engaged by the Plaintiff's claim are those protected under Article 6 and Article 1 of The First Protocol.

II THE EVIDENCE: A SUMMARY

[4] Somewhat unconventionally, but appropriately in the particular circumstances, the parties' respective cases were presented to the court in the form of two agreed bundles of documentary evidence alone. There was no examination-in-chief or cross-examination of any witness. Furthermore, following certain exchanges with the court, the parties submitted an agreed chronology of material dates and events. There were also skeleton arguments from each party. The legal representatives concerned are to be commended for adopting this approach. While I have considered the bundles of evidence in their entirety, in my outline of the material facts below I shall confine myself to what seems to me most significant.

[5] I would summarise the salient facts thus:

(a) On 5th March 1999, the Plaintiff, then a resident of Bangor in Northern Ireland, travelled from Cairnryan, Scotland, to Larne, Northern Ireland by ferry.

(b) Upon examining the Plaintiff's vehicle at Larne Harbour, HMCE officers found a large, and visible, quantity of tobacco, cigarettes and alcohol consisting of 27 kilograms of hand-rolling tobacco; 2,400 cigarettes; 11.2 litres of spirits; 135 litres of wine; 750 cigarillos; and 108 litres of beer.

(c) The Plaintiff agreed to submit to interview by HMCE officers. During interview, he stated that he was the owner of the vehicle in question; that he and his fellow passenger were the owners of the goods; that they had purchased the goods during the course of periodic visits to France and Belgium; that the goods were partly duty free and duty paid; that the purchases were designed exclusively for personal use; that the goods had cost

some £1,200, while the trip had cost around £300; that he was not in gainful employment and was in receipt of statutory benefits; that he had retired from work for medical reasons in 1989; that these purchase excursions had occurred with a monthly frequency since the previous September; and that he lived on his own in Bangor, Northern Ireland.

(d) The goods were seized by HMCE officers on the same date, 5th March 1999.

(e) On 4th June 1999, HMCE served a notice on the Plaintiff intimating that the goods "*… have been seized as liable to forfeiture under Section 139 of the Customs and Excise Management Act 1979*".

(f) A letter bearing the same date advised the Plaintiff "*… as you have failed to satisfy* [HMCE] *that the above goods were for personal use they are deemed liable to forfeiture under the provisions of* [the 1979 Act] *and are now seized … Should you choose to exercise your right of appeal within one month of the seizure date we must then begin proceedings to decide the matter in court. These will be civil proceedings, concerned only with forfeiture of the goods*". By the same letter the Plaintiff was informed that he would not be prosecuted.

(g) By letter dated 21st June 1999, the Plaintiff informed HMCE that he was challenging the seizure of his goods.

(h) From March 1999, the Plaintiff made formal complaints in writing to HMCE about their handling of the matter.

(i) By letter dated 5th September 2000, HMCE acknowledged the legitimacy of some of the Plaintiff's complaints. In particular, the letter accepted that the Plaintiff had been erroneously informed about the despatch of a file to the DPP and that the correction of this error had been unduly delayed. The letter also proffered an apology to the Plaintiff in respect of certain HMCE defaults and invited him to accept a "consolatory" payment of £50, which the Plaintiff immediately rejected.

(j) By a further letter dated 25th September 2000 to the Plaintiff, HMCE reiterated its apology "*… for the delays which you have encountered in your dealings with Customs and Excise while we have been dealing with your case*" and proposed an enlarged consolatory payment of £250 "*… for the delays and wrong advice which you have encountered in this instance*". The Plaintiff duly received this payment, on or about 11th October 2000.

(k) By letter dated 10th November 2000, HMCE informed the Plaintiff that it had "*… instituted condemnation proceedings and that the matter will now be processed through the courts*".

(l) The Plaintiff's grievances vis-à-vis HMCE culminated in a determination of "The Adjudicator" (Barbara Mills QC), dated 29th August 2001. The Adjudicator noted that HMCE had made a previous consolatory payment of £250 to the Plaintiff and recommended that this be increased to £300. This recommendation appears to have been based on the supply of erroneous information by HMCE to the Plaintiff that his case had been referred to the DPP and on the further ground "*… that the delay you suffered as a result was unreasonable …* ", with resulting worry and distress to the Plaintiff. The letter documents a further failure on the part of HMCE viz. to keep the Plaintiff informed of the progress of the condemnation proceedings. The Adjudicator also recommended that HMCE report forthwith to the Plaintiff on the progress of the condemnation proceedings. [In fact, no such proceedings were in existence at this stage].

(m) By letter dated 17th September 2001, HMCE advised the Plaintiff that arrangements were in hand to make the further consolatory payment of £50 to him and confirmed its willingness to refund the expenses incurred by the Plaintiff in retaining a barrister, upon receipt of evidence of payment. This letter also repeated the earlier apology in respect of "*our lack of communication and our delays in the past*". This was followed by a further consolatory payment of £50 to the Plaintiff and the reimbursement of his barrister's fees of £235.

(n) By Notice dated 14th November 2001, HMCE initiated condemnation proceedings against the Plaintiff in Belfast Magistrates' Court. By this application they sought an order under the Customs and Excise Management Act 1979 ("*the 1979 Act*") forfeiting the totality of the goods. The essence of HMCE's case was that they "*… were not satisfied that the goods in question were not held or to be used for a commercial purpose having regards* [sic] *to the answers given in the interview …*".

(o) Belfast Magistrates' Court was seised of the forfeiture proceedings between November 2001 and July 2002.

(p) As a preliminary issue, the Plaintiff's legal representatives contended that the proceedings should be stayed as the

reasonable time requirement enshrined in Article 6(1) of the Convention had been violated and, on 26th July 2002, the Resident Magistrate acceded to this application and ordered that the proceedings be stayed.

(q) By letter dated 26th July 2002, the Plaintiff's solicitors informed the Crown Solicitor's Office "*My client requires the return of his goods, or if his goods have been disposed of, equivalent goods, together with his travelling expenses incurred in travelling to Europe to replace the goods …*".

(r) On 27th September 2002, the Parliamentary Ombudsman made a determination in response to a complaint submitted by the Plaintiff's Member of Parliament. The Ombudsman agreed with the Adjudicator's determination and further found that the HMCE offer of over £1,500 compensation to the Plaintiff was "*a satisfactory outcome to Mr. Barr's latest complaint*", concluding "*In the circumstances I see no basis for the Ombudsman to investigate Mr. Barr's complaint*".

(s) In September 2002, HMCE made two payments to the Plaintiff, totalling £1,542.60.

(t) By letter dated 17th October 2002, the Plaintiff's solicitors withdrew their client's (previous) "conditional" willingness to accept "*a payment of £1472.60 to fully reimburse my client for his goods*".

(u) On 8th July 2003, the Writ of Summons whereby these proceedings were initiated was issued.

[6] Thus, by September 2002, arising out of its seizure of the Plaintiff's goods HMCE had paid the Plaintiff £1,542.60 reflecting the assessed value of the goods and the Plaintiff's travelling expenses, £300 in consolatory payments and £235 in respect of his barrister's fees. I was also provided with some limited information concerning an appeal or appeals pursued by the Plaintiff to the VAT and Duties Tribunal and a further, related recourse by him to the Court of Appeal. The Plaintiff's position was that these legal challenges did not arise out of the seizure of goods lying at the heart of the present proceedings. The Defendant did not demur from this. Accordingly, I propose to disregard this discrete matter.

III FIRST ISSUE: ARTICLE 6 OF THE CONVENTION

[7] It is of some significance that this is a pure Human Rights Act claim, a comparatively rare phenomenon in this jurisdiction. In the majority of cases

where applications for judicial review are concerned, complaints of Convention rights infringements are combined with conventional public law grounds of challenge, thereby giving rise to a mixed claim. Another forum in which Convention rights issues, particularly under Article 6, feature with some frequency is that of the criminal trial. Convention rights issues can also arise, of course, in a variety of civil litigation contexts. The outstanding feature of the present litigation is that the Plaintiff invokes no cause of action other than a complaint that two of his Convention rights have been infringed and he seeks redress accordingly.

[8] The first of the two Convention rights in play is Article 6, which provides, in material part:

> "*In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing* ***within a reasonable time*** *by an independent and impartial tribunal established by law*".

[Emphasis added].

Originally, the Plaintiff was asserting a threefold violation of Article 6, incorporating, firstly, a complaint that HMCE, by its conduct of the investigation and the proceedings, had deprived him of a fair hearing. The Plaintiff further complained of an unfair reversal of the burden of proof. These discrete complaints are no longer advanced by him. Rather, the sole violation of Article 6 which he asserts is a breach of the reasonable time guarantee with reference to the forfeiture proceedings in the Magistrates' Court.

[9] It was argued on behalf of the Plaintiff that he qualifies for the grant of one (or both) of the remedies pursued by him on the grounds of (a) HMCE's unreasonable delay in its conduct of the forfeiture proceedings in the Magistrates' Court and (b) HMCE's asserted failures to provide an explanation for this delay and to account to the Plaintiff for the fate of the seized goods. The Plaintiff's submissions drew attention to the following passage in ***Blackstone's Guide to the Human Rights Act 1998*** (Wadham et al, 4th Edition):

> "[6.08] *The ECtHR measures 'just satisfaction' under three heads: pecuniary loss, non-pecuniary loss and costs and expenses …*
>
> *The ECtHR has awarded non-pecuniary damages in respect of pain, suffering and physical or psychological injury including distress and anxiety*".

It was conceded on behalf of the Plaintiff that only the non-pecuniary head of damages was open to him. I consider that this concession was both realistic and proper, for the reason that the Plaintiff's pecuniary losses have already been compensated and he does not now seek any further compensation in respect of those losses.

[10] The contrary argument advanced on behalf of HMCE was, in summary form, that the Plaintiff has already secured adequate redress for the breach of Article 6(1) found by the Resident Magistrate on 26th July 2002. This redress takes the form of the compensatory payment to the Plaintiff of £1,542.60; the consolatory payments totalling £300; the further payment of £235 (including VAT) to reimburse counsel's fees; the stay of the forfeiture proceedings ordered by the Magistrates' Court; and the Adjudicator's finding whereby the Plaintiff's formal complaint was upheld, in part.

[11] In my view, the Plaintiff was correct in focussing this aspect of his case on the *civil rights* dimension of Article 6. I consider that forfeiture proceedings under the 1979 Act do not entail the determination of a criminal charge. Rather, they engage the civil rights and obligations limb of Article 6. In this respect, I refer to ***Walsh –v- Director of the Assets Recovery Agency*** [2005] NI 383 which, although concerned with recovery proceedings under the Proceeds of Crime Act 2002, contains a useful review of how the European and domestic jurisprudence has applied the three governing criteria, which are, respectively, the classification of the matter in national law; the nature of the "offence" alleged against the individual; and the seriousness of what is at stake, including the available penalties. In ***Customs and Excise Commissioners –v- City of London Magistrates' Court*** [2000] 4 All ER 763, Lord Bingham CJ stated:

> "*[17] It is in my judgment the general understanding that criminal proceedings involve a formal accusation made on behalf of the State or by a private prosecutor that a Defendant has committed a breach of the criminal law and the State or the private prosecutor has instituted proceedings which may culminate in the conviction and condemnation of the Defendant*".

Within the scheme of the 1979 Act, imported goods liable to customs or excise duty can be the subject of either forfeiture, under Section 49(1) **or** a prosecution (triable either way) under Section 50. This dichotomy, coupled with Lord Bingham's formulation and the application of the governing criteria in comparable cases, establishes clearly, in my view, that the forfeiture proceedings brought by HMCE in respect of the Plaintiff's goods in Belfast Magistrates' Court engaged the civil, rather than the criminal, limb of Article 6.

[12] Reflecting on the course of the proceedings in the Magistrates' Court at this remove and the order made by the Resident Magistrate, I note from the skeleton arguments furnished at that time that the parties proceeded on the basis that the forfeiture proceedings by HMCE were, within the framework of Article 6 of the Convention, civil in character. As appears from paragraph [11] above, I consider that they were correct to do so. While it is possible that the remedy requested and duly granted viz. a stay of those proceedings was motivated by the remedy then in vogue in delayed *criminal* proceedings, it has not been suggested that the stay ordered by the Resident Magistrate was *ultra vires* his powers. There was no challenge to the order by judicial review or appeal by case stated. This being so, the correct starting point probably is that the principle of presumptive validity (*omnia praesumuntur*) applies. Whether a Magistrates' Court, as a matter of law, is empowered to order a stay of civil proceedings such as forfeiture proceedings is a question which may have to be reconsidered, in that forum initially, in an appropriate case. I would merely observe that while the High Court undoubtedly has a power to order a stay of civil proceedings, such power is exercisable either in accordance with particular statutory provisions or, more typically, in pursuance of its inherent jurisdiction. The Magistrates' Court is a creature of statute and does not possess jurisdiction of the latter kind. Furthermore, the propriety of ordering a stay in forfeiture proceedings under the 1979 Act is clearly vulnerable to reconsideration in the light of Lord Bingham's statement in ***Attorney General's Reference No. 2 of 2001*** [2004] 1 All ER 1049, paragraph [21] (noted in paragraph [15], *infra*). I would leave open, for consideration and determination in some appropriate future case, the question of whether a Magistrates' Court has power to order a stay of proceedings of this type.

[13] In human rights claims, the topic of remedies is regulated by Section 8 of HRA 1998, which provides:

> ***"8 Judicial remedies***
>
> *(1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate.*
>
> *(2) But damages may be awarded only by a court which has power to award damages, or to order the payment of compensation, in civil proceedings.*
>
> *(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including-*
>
> > *(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and*

(b) the consequences of any decision (of that or any other court) in respect of that act,

the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.

(4) In determining -

(a) whether to award damages, or

(b) the amount of an award,

the court must take into account the principles applied by the European Court of Human Rights in relation to the award of compensation under Article 41 of the Convention.

(5) A public authority against which damages are awarded is to be treated –

(a) in Scotland, for the purposes of section 3 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 as if the award were made in an action of damages in which the authority has been found liable in respect of loss or damage to the person to whom the award is made;

(b) for the purposes of the Civil Liability (Contribution) Act 1978 as liable in respect of damage suffered by the person to whom the award is made.

(6) In this section-

"court" includes a tribunal;

"damages" means damages for an unlawful act of a public authority; and

"unlawful" means unlawful under section 6(1)."

Section 8 is susceptible to the following analysis:

(a) To begin with, the court must hold that the impugned act of the public authority concerned is (or would be) unlawful.

(b) The court must then consider whether it is just and appropriate to grant any relief or remedy, within its powers, to the Plaintiff.

(c) As regards damages, the court must be satisfied that this remedy is necessary to afford just satisfaction to the Plaintiff.

(d) In deciding whether an award of damages is to be made, the court must also take into account any other relief or remedy granted by any other court in respect of the impugned act.

(e) The court must also take into account the consequences of any decision of that court or any other court in respect of the impugned act.

(f) The court is not confined to taking into account the factors specified in (d) and (e) above: rather, the court is expressly enjoined to take account of "*all the circumstances of the case*".

(g) Finally, the court must also take into account the Article 41 jurisprudence of the European Court of Human Rights, in deciding whether to award damages or in determining the amount of an award.

[14] The question of the appropriate remedy where there is unreasonable delay in the context of *criminal* proceedings was the subject of extensive consideration by the House of Lords in ***Attorney General's Reference No. 2 of 2001***[2004] 1 All ER 1049, where Lord Bingham stated:

> "*[24] If, through the action or inaction of a public authority, a criminal charge is not determined at a hearing within a reasonable time, there is necessarily a breach of the Defendant's Convention right under Article 6(1). For such a breach there must be afforded such remedy as may be just and appropriate [Section 8(1) of the Human Rights Act 1998] or (in Convention terms) effective, just and proportionate. The appropriate remedy will depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach is established. If the breach is established before the hearing, the appropriate remedy may be a public acknowledgement of the breach, action to expedite the hearing to the greatest extent practicable and perhaps, if the Defendant is in custody, his release on bail. It will not be appropriate to stay or dismiss the proceedings unless (a) there can no longer be a fair hearing or (b) it would otherwise be unfair to try the Defendant …*
>
> *If the breach of the reasonable time requirement is established retrospectively, after there has been a hearing, the appropriate remedy may be a public acknowledgement*

> *of the breach, a reduction in the penalty imposed on a convicted Defendant or the payment of compensation to an acquitted Defendant*".

Lord Millett, for his part, observed:

> "*[137] This is a matter of right, not remedy. It marks the scope of the reasonable time requirement; it is not concerned with the nature of the remedy for breach.* ***This is amply demonstrated by the jurisprudence of the Strasbourg Court, which habitually accepts a reduction of the sentence as sufficient reparation for breach of the reasonable time requirement***".

[Emphasis added].

As His Lordship further noted, where delay occurs, neither the hearing nor the conviction/sentence is incompatible with Article 6. Rather, "*… the only violation consists of the delay*".

[15] ***Attorney General's Reference No. 2 of 2001*** was, of course, concerned with criminal proceedings. However, Lord Bingham said this of civil proceedings:

> "*[21] Secondly, as the Court of Appeal recognised – (2001) 1 WLR 1869, at [19] –* ***a rule of automatic termination of proceedings on breach of the reasonable time requirement cannot sensibly be applied in civil proceedings. An unmeritorious Defendant might no doubt be very happy to seize on such a breach to escape his liability, but termination of the proceedings would defeat the claimant's right to a hearing altogether and seeking to make good his loss in compensation from the State could well prove a very unsatisfactory alternative***".

[Emphasis added].

In my opinion, the effect of this passage is to place the spotlight, in civil proceedings on *the rights of the claimant (or Plaintiff),* rather than those of the respondent (or Defendant). In civil proceedings, the fundamental right in play is the claimant's right to a hearing. The effect of the Resident Magistrate's order that the forfeiture proceedings be stayed was to deprive HMCE, the moving party, of a hearing on the merits of its application. While it might be said that Lord Bingham's statement was *obiter*, given that the appeal was concerned with the criminal dimension of Article 6, it is, nonetheless, of obviously persuasive value, giving rise to the proposition that,

in retrospect, if the Resident Magistrate was empowered to order a stay of the forfeiture proceedings (which I have discussed in paragraph [12] above), he was wrong to do so. However, as already indicated, given the absence of any challenge to the Resident Magistrate's order, I doubt whether I am competent to reopen its validity at this stage and I do not propose to do so.

[16] In ***Her Majesty's Customs and Excise –v- Isherwood*** [2008] NIQB 104, Girvan LJ, referring to ***Attorney General's Reference No. 2 of 2001,*** observed at paragraph [3]:

> "*That* [decision] *related to criminal proceedings but the reasoning of the House of Lords is also persuasive in connection with civil proceedings having regard to the House's conclusion that only if the delay renders a trial unfair could a stay be considered appropriate. There are other lesser remedies which may be just if a trial can fairly be heard. In the present context, for example, the court may consider that the Plaintiff's claim for interest may be disallowed or reduced to take account of culpable delay.*"

These observations prompt the reflection that, so far as can be determined, when the Resident Magistrate made his ruling on 26 July 2002, he was not motivated by the question of whether the delay by HMCE had rendered the forthcoming trial unfair. Rather, he appears to have approached the matter mechanistically, determining to order a stay on the grounds that (a) the delay was so extensive as to give cause for concern, (b) it could not be justified by considerations such as complexity and (c) the Plaintiff's conduct had not contributed to it: see the digest of the decision in the Bulletin of Northern Ireland Law (Issue No. 6 of 2002). However, as observed above, the Resident Magistrate's Order stands unchallenged and, moreover, it has given rise to certain consequences, in particular the effective extinguishment of the forfeiture proceedings against the Plaintiff and the subsequent payment of compensation by HMCE to him. I shall consider further the impact and consequences of the Resident Magistrate's Order below.

[17] I have also had regard to the decision of the English Court of Appeal in ***Anufrijeva –v- London Borough of Southwark and Others*** [2004] 1 All ER 833, a housing accommodation case involving an asserted breach of the claimant's rights under Article 8 of the Convention, where the Court characterised the essence of the claimant's complaint as maladministration on the part of the public authority concerned. The court emphasized that damages are not recoverable as of right where a breach of the Convention is established. I would observe that this is to be contrasted with the case where a Plaintiff establishes tortious conduct on the part of a Defendant. Lord Woolf CJ stated:

"*[52] The remedy of damages generally plays a less prominent role in actions based on breaches of the Articles of the* [Convention] *… than in actions based on breaches of private law obligations …*

[53] Where an infringement of an individual's human rights has occurred, the concern will usually be to bring the infringement to an end and any question of compensation will be of secondary, if any, importance …

[55] The [HRA 1998] *code recognises the different role played by damages in human rights litigation and has significant features which distinguish it from the approach to the award of damages in a private law contract or tort action …*

[56] In considering whether to award compensation and, if so, how much, there is a balance to be drawn between the interests of the victim and those of the public as a whole …

[57] Section 8(4) of the 1998 Act requires the court to take into account the principles applied by the European Court of Human Rights when deciding whether to award damages and the amount of an award …

[59] … It is possible to identify some basic principles the European Court of Human Rights applies. The fundamental principle underlying the award of compensation is that the court should achieve what it describes as ***restitutio in integrum.*** *The Applicant should, insofar as this is possible, be placed in the same position as if his Convention rights had not been infringed. Where the breach of a Convention right has clearly caused significant pecuniary loss, this will usually be assessed and awarded …*

The problem arises in relation to the consequences of the breach of a Convention right which are not capable of being computed in terms of financial loss ...

[50] None of the rights in Part 1 of the Convention is of such a nature that its infringement will automatically give rise to damage that can be quantified in financial terms. Infringements can involve a variety of treatment of an individual which is objectionable in itself …

> *The primary object of the proceedings will often be to bring the adverse treatment to an end.*"

[Emphasis added].

[18] The tenor of the passages which follow is one of discouragement to those who would claim damages in Convention cases for maladministration giving rise to delay and consequential frustration and annoyance. This, I would observe, has a particular resonance in the present case. Lord Woolf CJ continued:

> "*[66] In determining whether damages should be awarded, in the absence of any clear guidance from Strasbourg, the principles clearly laid down by the 1998 Act may give the greatest assistance. The critical message is that the remedy has to be 'just and appropriate' and 'necessary' to afford 'just satisfaction'. The approach is an equitable one. The 'equitable basis' has been cited by the European Court of Human Rights both as a reason for awarding damages and as a basis upon which to calculate them. There have been cases where the seriousness or the manner of the violation has meant that as a matter of fairness, the European Court of Human Rights has awarded compensation consisting of 'moral damages'*".

And finally:

> "*[80] The reality is that a claim for damages under the 1998 Act in respect of maladministration, whether brought as a freestanding claim or ancillary to a claim for other substantive relief, if pursued in court by adversarial proceedings, is likely to cost substantially more to try than the amount of any damages that are likely to be awarded. Furthermore, as we have made plain, there will often be no certainty that an entitlement to damages will be established at all.*"

Again, this passage has an obvious resonance in the present case, given that the basis on which the Plaintiff invites the court to award damages, or grant a declaration, is that HMCE (a) delayed unreasonably in the conduct of forfeiture proceedings which resulted in the Plaintiff obtaining an order effectively extinguishing those proceedings and securing consequential compensation and (b) has failed to provide an explanation for this delay and to account for the fate of the seized goods: see paragraph [9] above. It seems to me that these latter two complaints belong firmly to the realm of

maladministration, having regard to how this concept is conventionally understood.

[19] The domestic jurisprudence on this topic evolved subsequently with the decision of the House of Lords in ***Regina –v- Secretary of State for the Home Department, ex parte Greenfield*** [2005] UKHL 14 and [2005] 1 WLR 673, which concerned a prison adjudication entailing a breach of the claimant's rights under Article 6 of the Convention. The sole issue of which the House was seised was the resulting claim for damages. From the opinion of Lord Bingham (with whom the remaining members of the Judicial Committee concurred) the following principles may be distilled:

(a) The central focus of the Convention is that of securing observance by Member States of minimum standards in the protection of the human rights which it guarantees.

(b) The scheme of the Convention is to require a Member State which has been found to have violated a protected right to take prompt steps to prevent a repetition, thereby serving the primary object of the Convention.

(c) HRA 1998 is not a tort statute, but has objects which are different and broader.

(d) Where a finding of a violation of a Convention right is made, this will form an important part of the claimant's remedy and an important vindication of the right he has asserted.

(e) Damages need not ordinarily be awarded to encourage high standards of compliance by Member States, given their obligations in international law.

(f) HRA 1998 is not designed to provide victims with better remedies than those available under international law in Strasbourg.

(g) It is to the Strasbourg jurisprudence that national courts must have regard.

(h) Where the national court considers an award of damages appropriate, the sum should not be significantly more or less generous than one would expect the European Court to award.

[20] Lord Bingham further emphasizes that Section 8 of HRA 1998 obliges the national court, in determining whether to award damages or the amount of an award, to take into account the Strasbourg principles "*… in relation to the*

award of compensation under Article 41 of the Convention": see Section 8(4). He continues:

> "*[6] … it is evident that under Article 41 there are three pre-conditions to an award of just satisfaction:*
>
> *(1) that the court should have found a violation;*
>
> *(2) that the domestic law of the Member State should allow only partial reparation to be made; and*
>
> *(3) that it should be necessary to afford just satisfaction to the injured party*".

Having analysed the structure and content of Section 8, His Lordship further observes:

> "*[6] … it would seem to be clear that a domestic court may not award damages unless satisfied that it is necessary to do so, but if satisfied that it is necessary to do so it is hard to see how the court could consider it other than just and appropriate to do so*".

[21] Lord Bingham's opinion also contains important guidance on the topic of redress in cases involving violations of Article 6. He cautions that such violations have one particular feature which distinguishes them from violations of other Convention rights:

> "*[7] … it does not follow from a finding that the trial process has involved a breach of an Article 6 right that the outcome of the trial process was wrong or would have been otherwise had the breach not occurred*".

At the outset of a detailed survey of the Strasbourg jurisprudence, he declares:

> "*[8] In the great majority of cases in which the European Court has found a violation of Article 6 it has treated the finding of the violation as, in itself, just satisfaction under Article 41 …*
>
> *[9] The routine treatment of a finding of a violation as, in itself, just satisfaction for the violation found reflects the point already made that the focus of the Convention is on the protection of human rights and not the award of compensation …*

> *Where Article 6 is found to have been breached, the outcome will often be that a decision is quashed and a retrial ordered, which will vindicate the victim's Convention right*".

Having quoted from ***Kingsley –v- United Kingdom*** [2002] 35 EHRR 177 (where the European Court found a breach of Article 6 arising out of a Gaming Board determination adverse to the Applicant), at paragraph [40], Lord Bingham continues:

> "*[11] As appears from the passage just cited, the court has ordinarily been willing to depart from its practice of finding a violation of Article 6 to be, in itself, just satisfaction under Article 41 only where the court finds a causal connection between the violation found and the loss for which an applicant claims to be compensated … such as loss of earnings or profits …*
>
> *It is enough to say that the court has looked for a causal connection and has on the whole been slow to award such compensation*".

[22] The decision in ***Greenfield*** also addresses the topic of non-pecuniary (or "general") damages. With reference to this, Lord Bingham states:

> "*[12] More germane to the present case is a second head of claim for what English lawyers would call general damages and the Court tends to call, but not always consistently, non-pecuniary damage. A claim under this head may be put on the straightforward basis that but for the Convention violation found the outcome of the proceedings would probably have been different and more favourable to the Applicant, or on the more problematical basis that the violation deprived the Applicant of an opportunity to achieve a different result which was not in all the circumstances of the case a valueless opportunity …*
>
> *[15] … In the absence of a clear causal connection, the Court's standard response has been to treat the finding of violation without more as just satisfaction*".

Addressing directly the phenomenon of claims for compensation under the banner of anxiety and distress, Lord Bingham says:

> "*[16] … in considering claims under this head the court has, consistently with its general approach, only been willing to award compensation for anxiety and frustration*

> *(however described) attributable to the Article 6 violation. It has recognised that for very many people involvement in legal proceedings is bound to cause anxiety irrespective of any Article 6 breach and no award is made in such cases …*
>
> *To gain an award under this head it is not necessary for the Applicant to show that but for the violation the outcome of the proceedings would, or would probably, or even might, have been different* ***and in cases of delay the outcome may not be significant at all****. But the court has been very sparing in making awards …*"

[My emphasis].

[23] The final theme to emerge from Lord Bingham's comprehensive review of the Strasbourg jurisprudence relates to the size of awards:

> "*[17] Where, having found a violation of Article 6, the court has made an award of monetary compensation under Article 41, under either of the heads of general damages considered in this opinion, whether for loss of procedural opportunity or anxiety and frustration, the sums awarded have been noteworthy for their modesty*".

Significantly, some disapproval of one particular aspect of the decision in ***Anufrijeva*** (see paragraphs [17] and [18] *supra*) is detectable. Lord Bingham specifically rejects the twofold suggestion that awards under Section 8 "*… should not be on the low side as compared with tortious awards*" and that, where damages are awarded for anxiety and frustration, the award should be comparable to those made by domestic courts and tribunals in discrimination cases. This, he declares, is not the correct approach: see paragraphs [18] and [19].

[24] In this sphere, reference should also be made to the valuable study of the Law Commission "Damages under the Human Rights Act 1998" [Law Com No. 266, CM 4853], published in August 2000. Bearing in mind the present litigation context, I refer particularly to paragraphs 6.113 – 6.124.

[25] In the present case, adopting by analogy Lord Bingham's dichotomy in ***Attorney General's Reference No. 2 of 2001***, at paragraph [24], the Plaintiff established a breach of the reasonable time guarantee within Article 6(1) *prospectively* i.e. in advance of the substantive hearing of the forfeiture proceedings. None of the remedial measures contemplated by Lord Bingham as appropriate in such circumstances followed from this finding. On the contrary, the Plaintiff secured from the Magistrates' Court what I consider to have been the maximum conceivable benefit: an order staying the proceedings. This brought the proceedings to an end. The benefit secured

by the Plaintiff by dint of the stay order requires no elaboration. Moreover, in my view, this order further has a declaratory effect. It declares, though not in express terms, that HMCE contravened the Plaintiff's right under Article 6(1) to trial within a reasonable time.

[26] Furthermore, the Resident Magistrate's Order was the trigger for the compensatory payment of £1,542 subsequently made by the Defendant to the Plaintiff. In my opinion, this was a further form of redress of substantial value in the circumstances. The compensatory payment was reparation for the cost of the goods seized by HMCE and the travel expenses incurred and it forms no part of the Plaintiff's case that he is entitled to compensation for some other loss or that the compensatory payment is inadequate: on the contrary, it is expressly acknowledged on the Plaintiff's behalf that he has no enduring claim for financial loss of any kind.

[27] In addition, I formally record in this judgment my view that there was, demonstrably, unreasonable delay on the part of HMCE in relation to the forfeiture proceedings. The dates speak for themselves. The Plaintiff's goods were seized in March 1999, the forfeiture decision was made in June 1999, the Plaintiff challenged this decision immediately and the proceedings were not initiated until November 2001, some two-and-a-half years later, culminating in the Resident Magistrate's ruling on 26th July 2002. I consider that this was a routine, uncomplicated matter which should have been brought before the Magistrates' Court by HMCE and determined within at most one year of the seizure. The delay was plainly unreasonable.

[28] However, ultimately, the Plaintiff secured a significant and substantial benefit as a direct result of this delay, in the form of the Order of the Magistrates' Court staying the forfeiture proceedings. This Order was made in circumstances where, in my view, there was a *prima facie* case against the Plaintiff, with a consequential real risk of a forfeiture order being made against him, without compensation to follow. In the events which occurred, this risk did not materialise, exclusively by virtue of the delay on the part of HMCE in preparing, initiating and prosecuting the forfeiture proceedings. This delay had no impact whatsoever on the fairness of those proceedings. In simple terms, in the events which occurred, it gave rise to the best possible outcome which the Plaintiff could have hoped to secure, viz. effectively, a dismiss.

[29] While there is no claim for pecuniary loss by the Plaintiff, I do not overlook the contention that he should recover damages for non-pecuniary loss in the form of anxiety and frustration. I am disposed to accept that the Plaintiff suffered some irritation and annoyance. However, there is no reliable barometer by which I can measure how much of this was attributable to the delay by HMCE in the forfeiture proceedings. I infer that a substantial proportion of the Plaintiff's frustration and anxiety must have been caused by

(a) the seizure and detention of his goods and (b) the fact of the civil proceedings, as notified in the HMCE letter of 4th June 1999, to be contrasted with the pace of those proceedings.

[30] Moreover, As appears from p. 6 of the Adjudicator's determination:

(a) HMCE had already accepted that it was guilty of unreasonable delay in the condemnation proceedings.

(b) HMCE had already apologised to the Plaintiff for such delay.

(c) HMCE had also apologised to the Plaintiff "*… for their failure to keep [him] informed of the progress of the condemnation proceedings*".

(d) HMCE had made a "*consolatory payment*" of £250 to the Plaintiff to reflect "*… in part, recognition of the worry and distress this error has caused. . .*"

(e) The Adjudicator characterised this a "*very serious error*".

(f) The Adjudicator considered the consolatory payment a reasonable one.

(g) To reflect the persistence of the default noted at (c) above, the Adjudicator recommended an additional consolatory payment of £50, coupled with an immediate report by HMCE of the progress of the proceedings.

(h) Finally, the Adjudicator recommended payment by HMCE of the amount of £200 plus VAT, an outlay incurred by the Plaintiff in securing the services of counsel as a direct result of the erroneous notification by HMCE that the proceedings would be criminal in nature.

The various payments made by HMCE to the Plaintiff arising out of the seizure of the goods are noted in paragraph [6] above.

[31] Applying the template of Section 8 of HRA 1998 to the Article 6 dimension of the Plaintiff's case, I hold as follows:

(i) HMCE is a public authority which has acted unlawfully in breaching the reasonable time requirement in the forfeiture proceedings, thereby violating the Plaintiff's rights under Article 6(1) of the Convention, contrary to Section 6 of HRA 1998.

(ii) This court has jurisdiction to award compensation.

(iii) The Plaintiff has already secured, from the Magistrates' Court, an order staying the forfeiture proceedings.

(iv) The said order is the equivalent of a permanent stay and its consequence was to terminate the proceedings, without any adjudication on the merits of HMCE's claim to forfeit the goods.

(v) Payments totalling £2,077.60 have been made by HMCE to the Plaintiff, arising out of the seizure of the goods. At least 75% of this sum can be linked directly with the infringement of the Plaintiff's rights under Article 6.

(vi) At this stage, the Plaintiff is seeking a further award of compensation, primarily in respect of the same non-pecuniary losses.

(vii) Having regard to the Strasbourg jurisprudence, I believe that, in these circumstances, the European Court would not award financial redress to the Plaintiff.

(viii) I conclude that it is not just, appropriate or necessary to afford just satisfaction to the Plaintiff to award compensation to him or to make a declaration.

[32] Further, I do not accept that the Plaintiff enjoyed – or enjoys – any right under Article 6(1) of the Convention to receive an explanation from HMCE of either the reasons for the delay in their conduct of the forfeiture proceedings or the ultimate destination and fate of the seized goods. In my opinion, rights of this nature are not protected by Article 6. In any event, relevant information and explanations were furnished to the Plaintiff in the Adjudicator's determination dated 29th August 2001. Secondly, HMCE informed the Plaintiff's solicitors, by letter dated 30th September 2002:

> "*Our procedure in dealing with seized goods that are likely to have deteriorated and become unfit for consumption by the time proceedings in relation to the liability to forfeiture have been concluded is destruction. This is on the understanding that, should a court decide that the goods were not liable to forfeiture, Customs will pay to the owner the purchase cost for the goods and any reasonable costs incurred in purchasing them*".

Account must also be taken of the witness statement of Carol Armstrong, a HMCE officer, which indicates that the goods in question "*… would have been destroyed*" some time before 4th November 2002.

[33] Finally, the Plaintiff must have been aware at all material times that the delays in processing the forfeiture proceedings were due to incompetence on the part of HMCE This can be readily inferred from all the evidence before the court, including the six complaints advanced by the Plaintiff and duly determined by the Adjudicator. At the hearing, counsel for HMCE (Mr. Aldworth), wisely, did not dispute the suggestion that ineptitude of this kind had occurred. I consider that this must have been evident to the Plaintiff at all material times.

[34] To summarise, I am obliged by Section 8 of HRA 1998 to take fully into account not only the relief secured by the Plaintiff from the Magistrates' Court but also the consequences thereof. Thus I take into account the stay ordered in the forfeiture proceedings and the total compensatory payment of £1542.60 made by HMCE to the Plaintiff. I attach limited weight only to the "consolatory" payments totalling £300 and the reimbursement of counsel's fees in the amount of £235, as the nexus between these payments and the infringement of the Plaintiff's rights under Article 6(1) of the Convention is not entirely clear. I further take into account those aspects of the Adjudicator's determination in the Plaintiff's favour which can be linked to the impugned delay and, to the same extent, the Parliamentary Ombudsman's finding that the Adjudicator's determination was satisfactory. I also weigh in the equation the written explanations and apologies proffered by HMCE to the Plaintiff. Having regard to all of the foregoing, the overarching test to be applied is whether I consider it just and appropriate to grant some further redress to the Plaintiff, in the form of a declaration or an award of damages. I conclude that, taking into account also the formal acknowledgment of this court in paragraph [27] above, the Plaintiff has already secured satisfactory redress for the established breach of his right under Article 6(1) of the Convention and, accordingly, I decline to grant him any further remedy under Section 8.

IV SECOND ISSUE: ARTICLE 1, FIRST PROTOCOL

[35] The subject matter of Article 1 of The First Protocol is "Protection of Property". It provides:

> "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties*".

In a consistent line of jurisprudence, the European Court has held that Article 1 comprises three basic rules. See, for example, ***Sporrong and Lonnroth –v- Sweden*** [1982] 5 EHRR 35, at paragraph [61]:

> "[The] *Article comprises three distinct rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property; it is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to certain conditions; it appears in the second sentence of the same paragraph. The third rule recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose; it is contained in the second paragraph.*"

As the European Court explained in a later case, the second and third rules are concerned with particular instances of the first rule (or general principle) and are to be construed accordingly. In short, the right to enjoy one's possessions, or property, is not absolute in nature.

[36] Applying the framework of Article 1 to the present case:

(a) It is common case that half the goods seized were the Plaintiff's "*possessions*".

(b) The seizure deprived the Plaintiff of "*peaceful enjoyment*" of the goods, permanently.

(c) Accordingly, the question becomes whether HMCE were entitled to subject the Plaintiff to this deprivation.

[37] The European jurisprudence recognises that Article 1 accommodates measures to prevent and combat the avoidance of customs duties – including fines, forfeiture of goods and the payment of duties on smuggled goods. In ***X –v- Austria*** [Application No. 7287/75] 13 DR 27 the Commission, having rehearsed the text of Article 1, stated [p. 28]:

> "*There is no doubt that the collection of customs duties for the smuggled articles, including the enforcement measures… was an exercise by the Austrian authorities of*

> *their right recognised by this provision to enforce the laws which they deem necessary to secure the payment of taxes or other contributions. In the Commission's view it cannot make any difference in this respect that the articles in relation to which these customs duties were collected were eventually declared forfeited.*"

Accordingly, for the Commission, the main issue was whether the forfeiture of the goods could be justified. The Commission was satisfied that the forfeiture of smuggled goods is embraced by Article 1(2), irrespective of whether it is characterised a financial "*penalty*" or a measure for the control of the use of property in accordance with the general interest. See p. 29:

> "*For, in any event, the forfeiture of smuggled articles constitutes a measure which may reasonably be considered as necessary to secure the payment of taxes or other contributions*".

The Commission then considered the issue of proportionality and concluded that while the sanctions imposed were undoubtedly "*very severe*", they were not excessive in the circumstances. The complaint was declared manifestly ill founded. In the realm of Strasbourg jurisprudence, I refer also to ***Air Canada –v- United Kingdom*** [1995] ECHR 18465/91, paragraphs [26]-[48] especially.

[38] The phenomenon of seizing imported cigarettes, alcohol and tobacco, together with the vehicle in which the goods are found, has featured in a number of domestic decisions. These include ***Regina (Hoverspeed) –v- Customs and Excise Commissioners*** [2002] EWCA Civ 1804; ***Lindsay –v- Customs and Excise Commissioners*** [2002] EWCA Civ 267; ***Customs and Excise Commissioners –v- Newberry*** [2003] EWHC 702 (Admin); and ***Customs and Excise Commissioners –v- Alzitrans SL*** [2003] EWHC 75 (Ch). The decision in ***Lindsay*** is noteworthy. There, the forfeiture of large quantities of cigarettes and alcohol, coupled with the vehicle in which these were found, was effected by HMCE. The Tax and Duties Tribunal held that forfeiture of the vehicle had been disproportionate. On appeal, the Court of Appeal ruled that where the importation of such goods is a domestic, non-profit making venture, the principle of proportionality requires that each case be considered on its own facts, to include the scale of the importation; whether it was a first offence; any attempt at concealment; the value of the vehicle; and the degree of hardship which forfeiture of the vehicle would occasion.

[39] Having noted the Commissioner's policy of automatic seizure of any car or light goods vehicle used for the smuggling or transportation of smuggled or diverted excise goods within the United Kingdom, Lord Phillips MR stated:

> "***[52]*** *The Commissioners' policy involves the deprivation of people's possessions. Under Article 1 of the First Protocol to the Convention such deprivation will only be justified if it is in the public interest. More specifically, the deprivation can be justified if it is 'to secure the payment of taxes or other contributions or penalties'. The action taken must, however, strike a fair balance between the rights of the individual and the public interest. There must be a reasonable relationship of proportionality between the means employed and the aim pursued (*Sporrong & Lonnroth v Sweden *(1982) 5 EHRR 35 at para 61;* Air Canada *as cited above). I would accept Mr Baker's submission that one must consider the individual case to ensure that the penalty imposed is fair. However strong the public interest, it cannot justify subjecting an individual to an interference with his fundamental rights that is unconscionable.*"

The court was satisfied that the aim of the policy, which was the prevention of the evasion of excise duty, constituted a legitimate aim under Article 1 of The First Protocol. The central issue to be addressed was proportionality. In the court's view, the failure of the policy to distinguish between the commercial smuggler and the driver importing goods for social distribution amongst family and friends with no profit making element was disproportionate, fundamentally because "*… the principle of proportionality requires that each case should be considered on its particular facts*": per Lord Phillips MR, paragraph [64]. To similar effect, Judge LJ stated:

> "***[72]*** *Given the extent of the damage caused to the public interest, it is, in my judgment, acceptable and proportionate that, subject to exceptional individual considerations, whatever they are worth, the vehicles of those who smuggle for profit, even for a small profit, should be seized as a matter of policy. However, the equal application of the same stringent policy to those who are not importing for profit fails adequately to recognise the distinction between them and those who are trading in smuggled goods. Accordingly the policy is flawed.".*

[40] Where, as here, a public authority detains possessions belonging to one of its citizens, giving rise to an asserted infringement of Article 1 of The First Protocol, the doctrinal framework to be applied is well established. Firstly, the interference or deprivation must be in accordance with the law. This requirement is clearly satisfied in the present case by the provisions of the 1979 Act, in particular Section 139(1), which provides:

> "*Any thing liable to forfeiture under the Customs and Excise Acts may be seized or detained by any officer or constable or any member of Her Majesty's Armed Forces or Coastguard*".

I refer also to the remaining provisions of Section 139 and the array of provisions contained in Schedule 3, which concern the forfeiture of goods. Secondly, the law must be sufficiently precise and foreseeable. I hold that this requirement is also satisfied by the provisions of the 1979 Act. Thirdly, the public authority concerned must act proportionately, which entails striking a fair balance between the means employed and the general interest sought to be protected [***Sporrong and Lonnroth***, paragraph 69]. The questions to be addressed are:

(a) Is the objective sufficiently important to justify limiting the right in play?

(b) Is the measure designed to meet the objective rationally connected to it?

(c) Are the means deployed to impair the right no more than is necessary to accomplish the objective?

Per Lord Steyn in ***Regina –v- Secretary of State for the Home Department, ex parte Daly*** [2001] 2 WLR 1622, paragraph [27]. It is also necessary to "*balance the interests of society with those of individuals and groups*": per Lord Bingham in ***Huang –v- Secretary of State for the Home Department*** [2007] UKHL 11, at paragraph [19].

[41] The payment of compensation to the Plaintiff by HMCE is, in itself, a consideration of some significance. In ***James –v- United Kingdom*** [1986] 8 EHRR 123, an expropriation of property case, the European Court stated:

> "*[54] The first question that arises is whether the availability and amount of compensation are material considerations under the second sentence of the first paragraph of Article 1, the text of the provision being silent on the point …*
>
> *Like the Commission, the Court observes that under the legal systems of the Contracting States, the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances not relevant for present purposes. As far as Article 1 is concerned, the protection of the right of property it affords would be largely illusory and ineffective in the absence of any equivalent principle.* ***Clearly,***

> ***compensation terms are material to the assessment whether the contested legislation respects a fair balance between the various interests at stake and, notably, whether it does not impose a disproportionate burden on the Applicants ...***
>
> *The Court further accepts the Commission's conclusion as to the standard of compensation:* ***the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference which could not be justifiable under Article 1. Article 1 does not, however, guarantee a right to full compensation in all circumstances***".

[Emphasis added].

[42] In the present case, the Plaintiff's goods were seized in the public interest. This is clearly a legitimate aim within the regime of Article 1. If the forfeiture proceedings had succeeded, the Plaintiff would have been deprived of the goods permanently. The termination of those proceedings stimulated a payment of compensation to the Plaintiff. It is acknowledged on behalf of the Plaintiff that the payment of £1,541 to him by HMCE was adequate compensation for the goods seized. I consider this to be an obviously material consideration in determining whether the Plaintiff's rights under Article 1 have been infringed.

[43] Having regard to the circumstances in which the seizure occurred in the present case and taking into account the Plaintiff's right to challenge this (which he duly exercised) and the role of the court as ultimate arbiter, coupled with the availability of compensation and the subsequent payment thereof, I am satisfied that the conduct of HMCE in this respect was proportionate in the Convention sense. While delay could conceivably give rise to an excessive burden, I am not satisfied that the delays which undoubtedly occurred in the present case did so, to the extent that a fair balance was not struck. I also take into account the nature of the goods seized, which were not necessities and the absence of any personal or special or sentimental value. These goods were, by their very nature, replaceable and I decline to infer that the Plaintiff suffered any undue burden in this respect, taking into account the evidence before me. Moreover, the correspondence emanating from the Plaintiff suggests that he was able to make other purchases of alcohol and tobacco for his personal use, following the seizure. I consider that the domestic laws which entitled the Plaintiff to challenge the seizure and seek an adjudication from the Magistrates' Court provided sufficient procedural safeguards. Finally, the Plaintiff was at liberty to complain to an independent adjudicator, a remedy which he duly exhausted to good effect.

[44] I do not consider that, in the particular circumstances of this case, Article 1 of The First Protocol conferred on the Plaintiff a right to be informed of the ultimate fate of the seized goods. While this might conceivably sound on the question of proportionality, I hold that it did not do so in the present case. In any event, I have already held that certain material information was supplied to the Plaintiff: see paragraph [32], *supra*.

[45] For the reasons set out above, I conclude that HMCE were not guilty of any breach of the Plaintiff's rights under Article 1 of The First Protocol. Accordingly, the first pre-requisite to a remedy enshrined in Section 8(1) of HRA 1998 is not satisfied. It follows that no question of granting redress to the Plaintiff arises.

[46] If I had held otherwise, it would have been necessary for me to consider the question of redress, under Section 8 of HRA 1998. On this hypothesis, I would have held the finding by this court of a breach, coupled with the compensatory payment of £1,541 to the Plaintiff and a reasonable proportion of the consolatory payment of £300, to constitute a sufficient remedy in the circumstances. It is common case that the compensatory payment already made by HMCE is adequate and the Plaintiff has not made the case that he has some other uncompensated loss. Moreover, having regard to all the evidence, I would not have held that a breach of Article 1 gives rise to any compensatable non-pecuniary loss on the part of the Plaintiff. I would further have held the grant of a declaration inappropriate, for the same reasons.

V DISPOSAL

[47] The procedural framework governing claims to the effect that a public authority has acted, or proposes to act, in a manner rendered unlawful by virtue of Section 6(1) of HRA 1998 is constituted by a combination of Section 7 of the statute and Order 121 of the Rules of the Supreme Court (NI) 1980. In a case such as the present, practitioners should be especially aware of the observations of Lord Woolf MR in ***Anufrijeva*** (*supra*), paragraphs [79] – [81]. To like effect are the cautionary words of Lord Bingham in ***Greenfield*** *(supra*) that "*… the pursuit of damages should rarely, if ever, be an end in itself in an Article 6 case and the Court of Appeal's strictures in* ***Anufrijeva*** *… paragraph [79], are very much in point*": see paragraph [30]. Worthy of attention also is the following passage in ***Anufrijeva***, at paragraph [81]:

"*It is hoped that with the assistance of this judgment, in future claims that have to be determined by the courts can be determined by the appropriate level of judge in a summary manner by the judge reading the relevant evidence. The citing of more than three authorities should be justified and the hearing should be limited to half a day*

except in exceptional circumstances. There are no doubt other ways in which the proportionate resolution of this type of claim for damages can be achieved. We encourage their use and do not intend to be prescriptive."

[48] Lord Woolf expressly deplored the fact that the court had been "*… deluged with extensive written and oral arguments and citation from numerous lever arch files crammed to overflowing with authorities*". Unfortunately, a somewhat similar experience materialised in the present case. While the hearing of this claim was conducted on paper, it occupied initially almost a full day, the Plaintiff's written submissions required the assembly of copious Strasbourg decisions and supplementary written submissions were needed in order to address a series of gaps, followed by a second day of hearing, albeit of brief dimensions. The disproportionate deployment of court time and resources which all of this entailed requires no amplification. While the Plaintiff's case was assembled and presented skilfully and tenaciously by his solicitor (Mr. Creighton), the prospects of securing a remedy from the court were, realistically, negligible. The reality is that if I had held that the Plaintiff was entitled to damages in respect of either or both of the Convention violations asserted, the award would have been measured in hundreds of pounds.
Practitioners will doubtless be alert to avoid a recurrence in future cases.

[49] In the result, I dismiss the Plaintiff's claim. There will be judgment for the Defendant against the Plaintiff. The appropriate costs order will be finalised following submissions from the parties.